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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

10 FREDERICK BANKS,

11 Plaintiff,

12 v.

13 ADRIAN ROE, et al.,

14 Defendants.

CASE NO. 3:17-CV-05555-RBL-DWC

REPORT AND RECOMMENDATION

Noting Date: September 1, 2017

15 Plaintiff Frederick Banks, proceeding *pro se*, filed a “Complaint and for a Writ of
16 Mandamus” (“Complaint”) in this Court on July 13, 2017. *See* Dkt. 1. Because Plaintiff resides
17 in Ohio and his claims arise out of conduct that occurred in the Western District of Pennsylvania,
18 the Court recommends this case be dismissed without prejudice.

19 **BACKGROUND**

20 Plaintiff, who is currently incarcerated at the Northeast Ohio Correctional Center in
21 Youngstown, Ohio, filed the Complaint alleging his criminal case in Western District of
22 Pennsylvania has been delayed. Dkt. 1-1. Plaintiff contends Defendants have delayed Plaintiff’s
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1 criminal trial by asserting his is mentally ill. *Id.* Plaintiff seeks monetary damages and seeks a
2 writ of mandamus against the judge presiding over his criminal case. *Id.*

3 The Court has not ordered the Clerk's Office to attempt service of process and
4 Defendants have not appeared in this action. *See* Docket. The Court also notes Plaintiff has filed
5 numerous lawsuits throughout the United States raising similar allegations. *See Banks v. Roe, et*
6 *al.*, Case No: 5:17-CV-153-C (N.D. Tex. July 24, 2017).

7 DISCUSSION

8 Venue may be raised by the Court *sua sponte* where the defendant has not filed a
9 responsive pleading and the time for doing so has not run. *See Costlow v. Weeks*, 790 F.2d 1486,
10 1488 (9th Cir. 1986). When jurisdiction is not founded solely on diversity, venue is proper in (1)
11 the district in which any defendant resides, if all of the defendants reside in the same state; (2)
12 the district in which a substantial part of the events or omissions giving rise to the claim
13 occurred, or a substantial part of the property that is the subject of the action is situated; or (3) a
14 judicial district in which any defendant may be found, if there is no district in which the action
15 may otherwise be brought. *See* 28 U.S.C. § 1391(b). When venue is improper, the district court
16 has the discretion to either dismiss the case or transfer it "in the interest of justice." *See* 28
17 U.S.C. § 1406(a).

18 Here, it is clear from Plaintiff's Complaint his claims arise out of conduct occurring in
19 the Western District of Pennsylvania. *See* Dkt. 1-1. Plaintiff states this case is related to the
20 criminal case pending in the Western District of Pennsylvania and the named Defendants are
21 related to his criminal case. *Id.* Plaintiff has not named any Defendants who appear to be located
22 in the Western District of Washington. Therefore, the Court concludes venue is improper.
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1 Because venue is improper, the Court has the discretion to dismiss or transfer the case.
2 See 28 U.S.C. § 1406(a). The Court has reviewed Plaintiff's cases filed in other jurisdictions and
3 determined Plaintiff has filed numerous cases related to conduct arising out of his Western
4 District of Pennsylvania criminal case. Several of these cases have been transferred to the
5 Western District of Pennsylvania. As such, the Court finds the interests of justice do not require
6 transferring yet another case alleging Plaintiff's criminal case is being delayed unconstitutionally
7 and seeking a writ of mandamus against the trial judge. Accordingly, the Court recommends this
8 case be dismissed without prejudice

9 CONCLUSION

10 In conclusion, the Court finds venue is improper and the interests of justice do not require
11 transferring this case. Therefore, the Court recommends this case be dismissed without prejudice
12 and Plaintiff's Motion for Leave to Proceed *In Forma Pauperis* (Dkt. 1) be denied as moot.

13 Pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), the parties shall have
14 fourteen (14) days from service of this Report to file written objections. See also Fed. R. Civ. P.
15 6. Failure to file objections will result in a waiver of those objections for purposes of *de novo*
16 review by the district judge. See 28 U.S.C. § 636(b)(1)(C). Accommodating the time limit
17 imposed by Fed. R. Civ. P. 72(b), the clerk is directed to set the matter for consideration on
18 September 1, 2017, as noted in the caption.

19 Dated this 15th day of August, 2017.

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22 David W. Christel
23 United States Magistrate Judge
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